



8011-01p
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-72542; File No. SR-NYSEArca-2014-73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Exclude the Date of the Annual Reconstitution of the Russell Investments Indexes for Billing Purposes When Calculating ETP Holder Average Daily Volume of Trade Activity and Consolidated ADV
July 3, 2014.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 24, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to exclude the date of the annual reconstitution of the Russell Investments Indexes (the “Russell Reconstitution Date”) for billing purposes when calculating ETP Holder average daily volume (“ADV”) of trade activity and consolidated ADV (“CADV”). The Exchange proposes to implement the fee change effective immediately. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to exclude the Russell Reconstitution Date for billing purposes when calculating ETP Holder ADV of trade activity and CADV.⁴ The Exchange proposes to implement the fee change effective immediately.

Various fees and credits in the Fee Schedule are based on an ETP Holder's ADV of trade activity during the billing month, taken as a percentage of CADV. CADV means U.S. CADV for transactions reported to the Consolidated Tape. Trade activity across all markets on the Russell Reconstitution Date typically exceeds levels on other days during the month, thereby resulting in an unusually higher CADV for the billing month. The Exchange therefore proposes to exclude the Russell Reconstitution Date when calculating ETP Holder ADV of trade activity and CADV. The Exchange would amend Footnotes 1 and 3 in the Fee Schedule to specify that trade activity and CADV, respectively, do not include the Russell Reconstitution Date. ETP Holder transactions on the Russell Reconstitution Date would continue to be subject to the fees

⁴ Questions and answers related to the Russell Reconstitution Date are available at <http://www.russell.com/indexes/americas/tools-resources/reconstitution/frequently-asked-questions.page>.

and credits in the Fee Schedule. The 2014 Russell Reconstitution Date is June 27, 2014.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because trade activity across all markets on the Russell Reconstitution Date typically exceeds levels on other days during the month, thereby resulting in an artificially higher CADV for the billing month. Trade activity of a particular ETP Holder, taken as a percentage of CADV, could therefore be lower on the Russell Reconstitution Date than during the rest of the billing month. This could prevent an ETP Holder from qualifying for the pricing tiers in the Fee Schedule, despite such ETP Holder's trade activity during the rest of the billing month being sufficient to qualify. The proposed change would therefore eliminate the potential for the increased trade activity that typically occurs on the Russell Reconstitution Date to cause an ETP Holder to fail to qualify for the pricing tiers in the Fee Schedule during that month.

The proposed change is equitable and not unfairly discriminatory because the Russell Reconstitution Date would be excluded when determining trade activity for all ETP Holders and

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

when determining CADV for billing purposes for all ETP Holders. The proposed change would eliminate a particular day of trade activity that is likely to be an outlier compared to the rest of the trading month, both with respect to a particular ETP Holder's trade activity as well as CADV for the month. While the proposed change is primarily designed so that an ETP Holder that would otherwise qualify for a pricing tier is not negatively impacted by the higher trade activity on the Russell Reconstitution Date, the proposed change would also eliminate the potential for an ETP Holder whose trade activity is artificially higher on the Russell Reconstitution Date to qualify for the pricing tiers when such ETP Holder's activity during the rest of the month is not representative of the levels required by the pricing tiers.

The proposed change is also reasonable because it is similar to the manner in which Footnotes 1 and 3 in the Fee Schedule currently specify that trade activity and CADV exclude trade activity on days when the market closes early. Without this existing exclusion, and in contrast to the artificially higher CADV for the month caused by the Russell Reconstitution Date, CADV for a billing month during which the market closes early on a particular day or days would be artificially low. The current exclusion eliminates the potential for the decreased trade activity that typically occurs on an early close day to make it more likely for an ETP Holder to qualify for the pricing tiers in the Fee Schedule. As with the existing exclusion for early close days, the proposed exclusion of the Russell Reconstitution Date is consistent with the Act because it would address a somewhat predictable variance in typical trade activity resulting from a known, future event (i.e., an early close day or, as discussed herein, the Russell Reconstitution Date).

The Exchange also believes that it is reasonable to exclude the Russell Reconstitution Date as proposed herein because the Nasdaq Stock Market LLC ("Nasdaq") treats the Russell

Reconstitution Date in the same manner.⁷

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,⁸ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would eliminate a particular trading day from consideration when calculating trade activity of ETP Holders and CADV for billing purposes, given that trade activity across all markets on the Russell Reconstitution Date typically exceeds levels on other days during the month, thereby resulting in an artificially higher CADV for the billing month. This proposed change would therefore provide all ETP Holders with a clearer picture of the level of trade activity required of them in order to qualify for the pricing tiers in the Fee Schedule. The Russell Reconstitution Date occurs toward the end of the billing month – June 27, 2014 for the next reconstitution. Only one trading day would remain in the month. Without this proposed exclusion, it would be difficult for an ETP Holder to modify its trade activity on the Exchange during the remainder of the month in order to make up for any shortfall with respect to the pricing tiers caused by the increased trade activity on the Russell Reconstitution Date.

Also, the Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the

⁷ See, e.g., Nasdaq Rule 7018(a). See also Securities Exchange Act Release No. 69758 (June 13, 2013), 78 FR 36801 (June 19, 2013) (SR-NASDAQ-2013-081).

⁸ 15 U.S.C. 78f(b)(8).

financial markets. In this regard, the Exchange notes that pricing on other exchanges treats the Russell Reconstitution Date in the same manner.⁹

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

⁹ See supra note 7.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹² of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2014-73 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2014-73. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

¹² 15 U.S.C. 78s(b)(2)(B).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2014-73, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2014-16100 Filed 07/09/2014 at 8:45 am; Publication Date: 07/10/2014]

¹³ 17 CFR 200.30-3(a)(12).